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No. 91-972

In The
Supreme Court of the United States
October Term, 1991

AMERICAN TRAIN DISPATCHERS ASSOCIATION, et al.,
Petitioners,

v.

CSX TRANSPORTATION, INC., et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENT CSX TRANSPORTATION, INC.'s BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Railway Labor Act's status quo obligation preclude a railroad from selling some of its rail lines, where the Interstate Commerce Commission has authorized the sale and the railroad's unions admit that the railroad has the managerial right, unrestricted by any collective bargaining agreement, to sell lines of its railroad.

RULE 29.1 STATEMENT

Respondent CSX Transportation, Inc. is a wholly owned subsidiary of CSX Corporation.

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RESPONDENT CSX TRANSPORTATION, INC.'s BRIEF IN OPPOSITION

CSX Transportation, Inc. ("CSXT") respectfully requests that this Court deny the petition for certiorari submitted by the American Train Dispatchers Association

and seven other unions (hereinafter "unions"),[1] seeking review of the D.C. Circuit's decision reported at 938 F.2d 224 (D.C. Cir. 1991) (hereinafter "*RLEA v. CSXT*").[2] The D.C. Circuit's decision was fully consistent with *Pittsburgh & Lake Erie Railroad Co. v. Railway Labor Executives Association*, 491 U.S. 490 (1989) (hereinafter "*P&LE*"), as well as three other appellate decisions reaching the same conclusion,[3] and with the proper administration of the Railway Labor Act ("RLA").

COUNTERSTATEMENT OF THE CASE

Like other large railroads, CSXT has been selling rail lines that were unprofitable or only marginally profitable to new or existing short line railroads, which were willing to take the risk that they could revitalize these lines and attract new business. Congress encouraged such sales when it amended the Interstate Commerce Act ("ICA") in 1980 by the Staggers Rail Act. Previously, such marginal lines were more often abandoned by the major carriers.

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[1]The two largest rail unions, Transportation Communications International Union and United Transportation Union, have dropped out of this case. *See* Pet. at ii.

[2]The D.C. Circuit's decision is also reproduced in Appendix A to the Petition CSXT cites pages in the reproduced opinion as "Pet. at ____".

[3]*CSXT v. United Transp. Union*, 139 L.R.R.M. (BNA) 2061 (2d Cir. 1991); *Chicago & Northwestern Transp. Co. v. RLEA*, 908 F.2d 144 (7th Cir. 1990), *cert. denied*, ___ U.S. ___, 111 S. Ct. 1073 (1991); *RLEA v. Chicago & Northwestern Transp. Co.*, 890 F.2d 1024 (8th Cir. 1989), *cert. denied*, ___ U.S. ___, 110 S. Ct. 3237 (1990).

Line sales to a non-railroad are subject to approval by the Interstate Commerce Commission ("ICC") pursuant to Section 10901 of the ICA, 49 U.S.C. § 10901. Sales to existing railroads are subject to ICA Section 11343, 49 U.S.C. § 11343. A key difference between the two types of transactions is that, in a Section 11343 sale, the ICC is required by statute to impose labor protective conditions upon the transaction. 49 U.S.C. § 11347. These conditions, commonly called the *New York Dock* conditions, provide that employees of the selling railroad who may be adversely affected by the sale are guaranteed their wages for up to six years and are eligible for other benefits. The cost of these protections are borne by the selling carrier. *RLEA v. CSXT,* 938 F.2d at 225, Pet. at 3a.[4] In Section 10901 transactions, the ICC has discretion whether to impose labor protective conditions. *See, e.g., P&LE,* 491 U.S. at 498-501. Although the unions complain in their Petition that the ICC changed its policy of imposing labor protections in line sales in the early 1980's, Pet. at 3, this change only related to the ICC's discretionary authority in Section 10901 sales. The specific line sales challenged in this case were Section 11343 sales, which were subject to the mandatory *New York Dock* conditions. *RLEA v. CSXT,* 938 F.2d at 225, Pet. at 3a.

As rail labor conceded in the Courts below, CSXT's line sales do not violate any provision in its collective bargaining agreements with its unions. However, when the parties' collective bargaining agreements came open

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[4]The ICC's application of its *New York Dock* protections in Section 11343 line sales was upheld in *RLEA v. ICC,* 930 F.2d 511 (6th Cir. 1991), which involved one of the line sales also at issue in this case. The unions did not seek this Court's review of the Sixth Circuit's affirmance of the ICC.

for amendment in 1988, the unions served bargaining proposals, called Section 6 notices in RLA parlance, seeking to improve their rates of pay and other benefits.[5] Among other topics, the unions proposed that a successorship provision be added to their collective bargaining agreements. This provision would require a railroad involved in a line sale, lease, or similar transaction, to protect its employees from any adverse impacts by obligating the acquiring entity to assume the selling carrier's unions, collective bargaining agreements, and employees. The railroads, including CSXT, served counter Section 6 notices on the unions. CSXT and the unions agreed that their respective bargaining proposals, including the successorship proposal, would be handled in national bargaining between railroads such as CSXT and the unions, which had agreed to the national bargaining.[6]

The service of the parties' Section 6 notices initiated the RLA's procedures for amending collective bargaining agreements, sometimes called the "major" dispute procedures. These procedures, involving bargaining, mediation, cooling-off periods, and, occasionally, Presidential and Congressional intervention, have been characterized as "purposefully long and drawn out," *Brotherhood of Ry. & S. S. Clerks v. Florida E. Coast Ry.*, 384 U.S. 238, 246 (1966), and "almost interminable,"

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[5]The written bargaining proposals take their name from Section 6 of the RLA. 45 U.S.C. § 156.

[6]Many of the nations' railroads have historically bargained with the unions on a national, multi-employer basis. *See, e.g., United Transp. Union v. Grand Trunk Western R.R. Co.*, 133 L.R.R.M. (BNA) 2845 (6th Cir.), *cert. denied*, ___ U.S. ____, 111 S. Ct. 55 (1990).

Detroit & Toledo Shore Line R.R. v. United Transp. Union, 396 U.S. 142, 149 (1969) (*"Shore Line"*). In *Shore Line*, this Court explained that, during the pendency of these procedures, the parties had to maintain the status quo. That status quo requirement embraced the working conditions out of which the dispute arose.

Bargaining and mediation under the auspices of the National Mediation Board ("NMB"), pursuant to Section 5 of the RLA, 45 U.S.C. § 155, failed to produce settlement of the parties' Section 6 proposals. The unions conceded that CSXT participated in these efforts. *RLEA v. CSXT*, 938 F.2d at 226, Pet. at 5a. The President then appointed an emergency board, Presidential Emergency Board No. 219 ("PEB"), pursuant to Section 10 of the RLA, 45 U.S.C. § 160, to recommend a settlement of the disputed issues.

District Court Proceedings

In the meantime, the unions took the position that, once they had served their Section 6 notices seeking to bargain new benefits for employees affected by line sales, CSXT could no longer sell rail lines until after the RLA's major dispute procedures had been exhausted. According to the unions, the working conditions here included the continued operation and ownership by CSXT of all of the rail lines which it owned or operated on the particular day the unions served their respective Section 6 notices. They brought a complaint in District Court against CSXT, where they sought to enjoin, as a violation of the RLA status quo, six specific Section 11343 line sales to short line railroads, which had been approved by the ICC.

The unions argued that their case was not controlled by *P&LE*, which they would limit to the situation where a railroad was selling all of its rail lines. Instead, the unions relied on this Court's decisions in *Shore Line* and *Order of Railroad Telegraphers v. Chicago & North Western Railway Co.*, 362 U.S. 330 (1960) ("*Telegraphers*"), for their construction of the RLA status quo. In *Telegraphers*, the Court held that a railroad had to bargain over its decision to reduce and consolidate the number of stations along its rail lines. In *Shore Line*, the Court held that the rail yard reporting points where employees historically reported for work assignments were working conditions subject to the status quo requirement. Therefore, the railroad could not alter such reporting points without first exhausting the RLA's major dispute procedures.

CSXT took the position that the rationale of *P&LE* applied equally to the sale by a railroad of portions of its system as to all of its rail system. Hence, under this Court's *P&LE* decision, the ownership and operation of rail lines were not working conditions within the meaning of the RLA's status quo requirement. The District Court agreed and dismissed the unions' complaint.

Appellate Proceedings

The unions then appealed to the D.C. Circuit, which agreed with the District Court that the case was controlled by *P&LE*. The D.C. Circuit found itself in agreement with other appellate courts which had heard these same unions' arguments and concluded that there was "no sensible basis" to limit *P&LE's* rationale to its facts, as they unions urged, citing *Chicago & Northwestern*

Transportation Co. v. RLEA, 908 F.2d 144, 152 (7th Cir. 1990) (*"C&NW v. RLEA"*), *cert. denied*, ___ U.S. ___, 111 S. Ct. 1073 (1991); and *RLEA v. Chicago & Northwestern Transportation Co.*, 890 F.2d 1024, 1025 (8th Cir. 1989), cert denied, ___ U.S. ___, 110 S.Ct. 3237 (1990). 938 F.2d at 229, Pet. at 10a. The D.C. Circuit denied rehearing and rehearing en banc on September 19, 1991.

Subsequent PEB and Congressional Proceedings

As the unions note in their petition, while their appeal was pending, the PEB investigated the labor dispute between the railroads and unions. The PEB received written submissions and conducted hearings on the parties' positions in collective bargaining, including on the line sale issue. *See Report to the President by Emergency Board No. 219* at 15-18 and 116 ("Several other issues, such as the Organizations' proposals regarding Line Sales, were also considered by the Board.") (Jan. 15, 1991). Indeed, the unions made a separate presentation to the PEB on the line sale issue, urging it to adopt their successorship proposal. Ultimately, although the PEB adopted certain union proposals, it did not include in its recommendations the unions' line sale proposal. The PEB also recommended a moratorium, until November 1, 1994, on the service of new Section 6 notices, by labor or management, which sought to re-open matters that were or could have been raised during this round of bargaining. The purpose of the moratorium was to ensure labor peace during this period.

Under the RLA, the PEB's recommendations are not binding and were rejected by the unions. A resulting

one-day nation-wide rail strike was ended when Congress imposed the PEB's recommendations on the parties in Public Law No. 102-29 (April 18, 1991). Congress there also created a Special Board, which the parties could ask to modify the PEB's recommendations. *Id.* § 2. In fact, the unions asked the Special Board to modify the moratorium in the PEB report to allow unions to re-open the line sale issue. The Special Board found that "the recommendations of PEB 219 are fair and demonstrably equitable" and rejected their request for modification in a report issued July 18, 1991. *Report of the Special Board (102-29), Requests for Modification of the Report of Emergency Board No. 219 (Executive Order No. 12714)* at 15 (July 18, 1991). The PEB's recommendations became effective July 28, 1991.

REASONS WHY THE PETITION SHOULD BE DENIED

The unions argue that Supreme Court review is justified for two reasons. First, they argue that the D.C. Circuit's decision was contrary to this Court's opinions in *P&LE*, *Shore Line*, and *Telegraphers*. Second, they fall back on the old saw that review is necessary for the proper administration of a statute, here the RLA. Neither claim is true; the Petition should be denied.

This Court recently visited in *P&LE* the issue presented by the unions' Petition. While *P&LE's* holding that the RLA's status quo requirement did not preclude consummation of an ICC-authorized line sale was in the context of a total line sale, the *P&LE* opinion's rationales clearly apply to partial line sales, as the D.C. Circuit and

three other circuits have held.[7] The uniform application by these courts of appeal of the clear reasoning of this Court does not warrant review of the D.C. Circuit decision.[8]

Furthermore, the D.C. Circuit's application of *P&LE* to a partial line sale was correct. Two rationales underlay *P&LE*. First, not all topics are mandatory subjects of bargaining under the RLA. This Court held in *P&LE* that the decision to sell rail lines was a "management prerogative" and that the unions had no expectation that "labor would have a substantial role in the decision to sell or in negotiating the terms of the sale." 491 U.S. at 507. Second, *P&LE* found its construction of the RLA was necessary to avoid a conflict with the ICA and that statute's encouragement of line sales. As the D.C. Circuit concluded, both of these rationales apply equally to partial line sales. Just as there is no indication Congress intended in the RLA that unions be able to dictate the terms of a total line sale,

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[7]*See* note 3 *supra*. The unions avoided the possibility of yet another adverse appellate decision by voluntarily dismissing their appeal in *RLEA v. Union Pacific Railroad Co.*, No. 90-110DA (D. Ore. May 14, 1991), *appeal dismissed*, No. 91-35753 (9th Cir. 1991). That Court, like the District Court here, dismissed an essentially identical union complaint on the same basis upheld by the D.C. Circuit. *See also MT Properties, Inc. v. Transportation-Communications Int'l Union*, 914 F.2d 1083, 1089 (8th Cir. 1990).

[8]As the Ninth Circuit stated in *United States v. Underwood*, 717 F.2d 482, 486 (9th Cir. 1983), *cert denied*, 465 U.S. 1036 (1984), "[i]n the decision of individual cases the [Supreme] Court must and regularly does establish guidelines to govern a variety of situations related to that presented in the immediate case. The system could not function if lower courts were free to disregard such guidelines whenever they did not precisely match the facts of the case in which the guidelines were announced."

there is no indication of any intent to give unions that power over partial line sales.

In addition, by arguing *P&LE* should be limited to its facts, the unions completely ignore the second basis for the *P&LE* holding -- the "obligation to avoid conflicts between two statutory regimes, namely, the RLA and ICA, that in some respects overlap." 491 U.S. at 510. The unions' Petition omits any reference to this aspect of *P&LE*. The D.C. Circuit correctly concluded that the need to give effect to the RLA and ICA had equal force in the circumstance of partial line sales, which obviously occur more frequently than a total line sale. Moreover, the obligation to avoid a conflict with the ICA is even stronger in the context of Section 11343 transactions, given this Court's recent decision that ICC authorization of such transactions can supersede inconsistent RLA obligations. *Norfolk & W. Ry. v. American Train Dispatchers' Ass'n*, ___ U.S. ___, 111 S. Ct. 1156 (1991).[9]

Supreme Court review also is unnecessary for the proper administration of the RLA. As indicated, there is no disagreement among the lower courts on the implications of *P&LE*. In addition, nothing in the D.C. Circuit decision precludes the unions from again raising the issue of the effects on employees of line sales when the parties' agreements are susceptible to amendment in 1994.

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[9]Unlike the sales identified in the unions' complaint here, the line sale at issue in *P&LE* was subject to ICC approval under Section 10901 rather than Section 11343 of the ICA.

I. The D.C. Circuit's Decision Was Fully Consistent with *P&LE*

Here, as in *P&LE*, the unions argued that, once they served Section 6 notices seeking to amend their agreements to obligate the railroad to require any purchaser, as a condition of the sale, to take the seller's unions, agreements, and employees, the railroad could not consummate the sale until the RLA's major dispute procedures had been exhausted. Otherwise, the unions argued, the railroad would violate the RLA status quo requirement. The unions also contended that scope of the status quo obligation was defined by the scope of the bargaining obligation. Relying on *Telegraphers*, the unions argued that the railroad had to bargain over its decision to sell as well as the sale's effects on employees. Since the unions' bargaining demands, if adopted, would dictate in part the terms of the sale, in order to preserve the status quo, the railroad had to forgo the sale during bargaining.

In *P&LE* the Court rejected the unions' construction of the RLA status quo and bargaining requirements as unsupported by the statute or legislative intent. The RLA limits mandatory subjects of bargaining to "rates of pay, rules, or working conditions." 45 U.S.C. § 156. In essence, this Court found the RLA did not intend that all topics be mandatory subjects of bargaining. P&LE's decision to sell its rail lines and reduce employment was held to be a managerial prerogative and not "a change in the conditions of employment forbidden by the status quo provision of § 156." 491 U.S. at 509. The Court distinguished *Shore Line*, as having "extended the relevant language of § 156 to its outer limits. . . ." *Id.* at 506.

The Court then limited *Shore Line* and *Telegraphers* to their facts and further distinguished them on the basis that they did not involve the fundamental decision of "a railroad's freedom to leave the market." *Id.* at 508 n.17.[10] This Court also found that its construction of the RLA was necessary to fulfill its obligation to avoid conflicts between two statutory regimes, the RLA and ICA. *Id.* at 510. *See, also, id.* at 511 ("[W]e are confident that the RLA is reasonably subject to a construction that would, at least to a degree, harmonize the two statutes."). The Court recognized that the unions' construction of the RLA would frustrate Congress' intent in the ICA to encourage the timely sale of failing rail lines. *Id.* at 510-11.

The D.C. Circuit applied these rationales to a partial line sale. The unions concede that the D.C. Circuit's "conclusions are consistent with this Court's decision in *P&LE* . . . ." Pet. at 12. However, the unions argue that *P&LE* should be limited to the facts of a railroad going completely out of the rail business. While this Court limited its *holding* in *P&LE* to the facts before it, nothing in *P&LE* indicates that its *reasoning* would not apply to partial line sales. As the D.C. Circuit found, a managerial decision to sell part of a rail system is not qualitatively different from the decision to sell all rail lines. Both decisions involve "a railroad's freedom to

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[10]The unions apparently reference the 1936 Washington Job Protection Agreement as some evidence that rail unions have an expectation to bargain over a railroad's decision to sell lines. Pet. at 14. However, as the Petition itself explains, that Agreement went to effects, not to the decision itself. Moreover, the Agreement related to mergers, not line sales. From the undisputed fact that CSXT's agreements contain no restrictions on its right to sell parts of its rail system, it is clear that heretofore the unions have never had any expectation to affect the terms of such sales.

leave the market." *RLEA v. CSXT*, 938 F.2d at 228, Pet. at 9a-10a (quoting *P&LE*, 491 U.S. at 508 n.17). The unions now argue that CSXT was not, in fact, leaving the market, because the subject rail lines would still be operated by someone, who will interchange freight with CSXT. Pet. at 17-18. An argument that the D.C. Circuit misconstrued facts never presented to the District Court is hardly the basis for Supreme Court review. In any event, there was no basis for the unions' contention that CSXT did not leave the markets where it sold lines of its railroad. The fact that CSXT may interchange rail traffic with the new railroads does not mean CSXT has not left these markets and redirected its capital. As a common carrier, CSXT is required by law to interchange with all rail carriers with which it interconnects. This in no way alters the fact that, after the sale, markets left by CSXT are served by lines owned and operated by independent carriers, unaffiliated with CSXT. These carriers are responsible for the service provided on these lines and for their success or failure.[11]

Furthermore, as in the case of a total line sale, there is no indication in the language or purpose of the RLA that Congress intended unions to be able to dictate the terms of partial line sales or preclude such sales through their bargaining demands. Yet, that is the result the unions are seeking. Under their construction of the RLA status quo, CSXT would have had to cease selling rail lines for the three year period the parties were in bargaining over the parties' Section 6 notices. This argument is made despite the unions' admission that

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[11]Moreover, in many of these sales, the purchaser has connections with other railroads.

CSXT's management right to sell rail lines was not limited by existing collective bargaining agreements. According to the union theory, CSXT could resume selling lines after this period, but only until November 1994, when the unions would again be free to serve new Section 6 notices relating to line sales. Presumably, CSXT would again be barred from consummating line sales until after exhaustion of that round of bargaining, and so-on and so-forth. As the D.C. Circuit found, the unions "concept of 'status quo'. . . is defined by the wishes of the unions as expressed in their bargaining proposals," 938 F.2d at 229, Pet. at 10a, a concept for which there is no support in the RLA.

The D.C. Circuit also heeded *P&LE's* admonition that the Courts have an obligation to construe the RLA to avoid conflicts with the ICA. *RLEA v. CSXT*, 938 F.2d at 230, Pet. at 12a (citing *P&LE*, 491 U.S. at 510-11). The unions' argument in this case would create an even greater conflict between the RLA and ICA than was present in *P&LE*. It would be an anomalous result to avoid a conflict with the ICA in the relatively rare instance of a total line sale, but not in the more common partial line sale. Understandably, the unions nowhere address this aspect of *P&LE* in their Petition.

Similarly, the D.C. Circuit, like this Court in *P&LE*, properly distinguished *Shore Line* and *Telegraphers*. Neither decision involved a carrier's decision to sell lines. In *Shore Line*, the issue was whether the railroad had to bargain over a change in employees' reporting points. In *Telegraphers*, the issue was whether the railroad had to bargain over the reduction in the number of train stations it would staff along rail lines it would continue to own and operate. In neither case did the railroad propose to

sell its rail lines. The D.C. Circuit's conclusion that *Telegraphers* and *Shore Line* involved the "utilization of labor," rather than the scope of a carrier's business was fully consistent with this Court's characterization of these decisions in *P&LE*. 491 U.S. at 508 n. 17. These two decisions also did not involve the need to "harmonize" the RLA and ICA.[12]

Finally, the D.C. Circuit did not run afoul of *Telegraphers* or footnote 23 of *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981) (hereinafter "*First National Maintenance*"), by importing *First National Maintenance's* balancing test into the RLA. The D.C. Circuit, while citing, without discussion, *First National Maintenance*, clearly relied on *P&LE* for its holding. Moreover, *First National Maintenance*, like *Textile Workers Union v. Darlington Manufacturing Co.*, 380 U.S. 263 (1965), is fully consistent with *P&LE*. All three decisions involved an employer's decision to restructure its business and, as a result, "leave the market" through the sale of operation. In contrast, as explained, *Telegraphers* was not about leaving a market or the utilization of capital, but the utilization of labor. But, even if the scope of mandatory bargaining were broader under the RLA than the National Labor Relations Act ("NLRA"), the RLA clearly still does not make all topics bargainable.[13]

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[12]There is absolutely no basis for the unions' suggestion that *P&LE* drew a distinction between total and partial line sales based on constitutional considerations. Pet. at 13. The *P&LE* opinion nowhere discusses any such considerations.

[13]While unnecessary to decision in this case, there is no reasoned basis for the unions' claim that the scope of mandatory bargaining is broader under the RLA than the NLRA. There is *dicta* to this effect in *P&LE*, 491 U.S. at 508

(continued...)

II. Supreme Court Review Is Unnecessary for the Proper Administration of the RLA

The unions do not articulate with any specificity or clarity why Supreme Court review is "of exceptional importance to the orderly administration of the [RLA]." Pet. at 11. Contrary to the unions' implication, the D.C. Circuit's decision in no way impairs labor relations in the rail industry; nor does it impair the unions' ability to bargain over the effects of line sales.[14] During this round of bargaining, the unions were able to have the line sale issue considered by the railroads, the NMB, the PEB, Congress, and the Special Board. In other words, the RLA worked exactly as Congress intended. The fact that rail labor did not obtain what it desired through this process and may seek bargaining over line sales again after the contracts come open for amendment in November 1994, also does not justify Supreme Court

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[13](...continued)
n.17, and *First National Maintenance*, 452 U.S. at 687 n.23. Nothing in the language of the RLA, however, requires this conclusion. Indeed, the legislative history of the NLRA indicates that the scope of RLA bargaining is narrower than under the NLRA. *Inland Steel Co. v. NLRB*, 170 F.2d 247, 254-55 (7th Cir. 1948), *aff'd on other grounds sub nom. Am. Communications Ass'n v. Douds*, 339 U.S. 382 (1950). Additionally, the judicial gloss that RLA bargaining is broader is no longer valid in view of congressional intent, as expressed in the Staggers Act, that railroads have at least the same ability as other employers to make critical decisions regarding the scope of their business. *See United States v. Fausto*, 484 U.S. 439, 453 (1988).

[14]CSXT took the position that there was no mandatory effects bargaining obligation in Section 11343 sales, because of the ICC's exclusive jurisdiction and imposition of statutory labor protections addressing the effects on employees from such sales. However, the effects issue was presented by the unions to the PEB. CSXT and the nature of the effects bargaining obligation in such sales never became an issue in this case. *See RLEA v. CSXT*, 938 F.2d at 226, Pet. at 5a.

review. Nor is there "an urgent need for a definitive resolution to this controversy," Pet. at 17, because, the line sale issue has been put to rest by the four appellate decisions rejecting the unions' characterization of the status quo requirement in partial sales. The unions' contention that these decisions "lack a consistent thread," Pet. at 16, is meritless. All relied upon *P&LE*. The unions themselves concede that the D.C. Circuit and Second Circuit decisions employed the same rationale. *Compare RLEA v. CSXT* with *CSXT v. United Transportation Union,* 139 L.R.R.M. (BNA) 2061 (2d Cir. 1991) *("CSXT v. UTU")*. While the Seventh Circuit posited alternative rationales, all were premised upon *P&LE, see, e.g., C&NW v. RLEA,* 908 F.2d at 152, 155, and the Seventh Circuit's decision was cited with approval by the D.C. and Second Circuits, neither of which saw any inconsistency. *CSXT v. UTU,* 139 L.R.R.M. at 2067; *RLEA v. CSXT*, 938 F.2d at 224. Pet. at 11a. The D.C., Second and Seventh Circuits also cited with approval the Eighth Circuit's decision.

Finally, there is also no urgent need for this Court's review, because, as the unions' own Petition demonstrates, bargaining between the parties on the line sale issue is closed until November 1994. At that time, the unions will be free to serve new Section 6 notices and, if they so desire, raise the issue of the effects of line sales again.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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